IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10609 of 2004

HON'BLE MR.JUSTICE K.S.JHAVERI

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SHUSHILABEN SATYAPAL SHARMA

Versus

YAGNESHBHAI DAMANLAL DESAI

Appearance:

MR RAMESH K SHAH for Petitioner No. 1

MR SATYAM Y CHHAYA for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 13/10/2004

ORAL JUDGEMENT

1. Draft amendment granted.

2. Rule. Mr.Satyam Chhaya waives service of rule for the respondents.

3. The petitioner has challenged the order dated 28.7.2004 passed by the Judge,Small Cause Court, Ahmedabad dated 28.7.2004 below Exh.166 whereby the learned Judge has rejected the application filed by the petitioner for recording her evidence through Commissioner.

4. Heard the learned counsel for the respective parties. The petitioner is aged 82 years and in view of the said fact she has filed the Application Exh.166. I am of the opinion that since the petitioner is a senior citizen the trial court ought to have granted the request of the petitioner inasmuch as if a Commissioner is appointed for such purpose no prejudice is likely to be caused.

5. In the premises aforesaid the petition is allowed. The order dated 28.7.2004 passed by the Judge, Small Cause Court, Ahmedabad, below Exh.166 is quashed and set aside. The trial court shall appoint a Commissioner as per the Application below Exh.166. Looking to the fact that the petitioner and the respondents are senior citizens, the trial court shall hear and dispose of the main suit within a period of one year from the date of receipt of writ of this Court. Rule is made absolute to the aforesaid extent with no order as to costs.

[K.S. JHAVERI, J.]

ar